

GAHC010142412024



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/3586/2024**

GAIL (INDIA) LIMITED AND 2 ORS.  
GAIL BHAWAN, 16 BHIKAJI CAMA PLACE, R K PURAM, NEW DELHI-  
110066.

2: PANKAJ KUMAR BISWAS  
S/O- DINENDRA NATH BISWAS  
GENERAL MANAGER (O AND M) AND OIC  
GAIL (INDIA) LIMITED  
AGARTALA AND LAKWA  
VIP ROAD  
OPP RADHANAGAR  
BUS STAND  
AGARTALA  
TRIPURA  
PIN- 799005.

3: GAIL (INDIA) LIMITED  
LAKWA  
SIVASAGAR  
ASSA

VERSUS

THE UNION OF INDIA AND 4 ORS  
REPRESENTED BY SECRETARY, MINISTRY OF FINANCE (DEPARTMENT OF  
REVENUE), NORTH BLOCK, CENTRAL SECRETARIAT, NEW DELHI.

2: ASSISTANT COMMISSIONER  
CENTRAL GOODS AND SERVICE TAX  
DIBRUGARH DIVISION  
C.R. BUILDING  
P.O. C.R. BUILDING  
DIBRUGARH-786003.

3:OFFICE OF THE ASSISTANT COMMISSIONER  
CENTRAL EXCISE DIVISION  
JORHAT  
STATION GODOWN ROAD  
JORHAT-785001.

4:COMMISSIONER  
CENTRAL GOODS AND SERVICE TAX  
DIBRUGARH DIVISION  
C.R. BUILDING  
P.O. C.R. BUILDING  
DIBRUGARH-786003.

5:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS  
DEPARTMENT OF REVENUE  
MINISTRY OF FINANCE  
GOVT. OF INDIA  
REPRESENTED BY ITS CHAIRMAN

**B E F O R E**  
**HON'BLE MR. JUSTICE DEVASHIS BARUAH**

Advocate for the petitioner(s) : Mr. S Mitra

Advocate for the respondent(s): Mr. SC Keyal  
Standing Counsel, GST

**JUDGMENT & ORDER(ORAL)**

**26.07.2024**

Heard Mr. S Mitra, the learned counsel appearing on behalf of the petitioners. Also heard Mr. SC Keyal, the learned counsel appearing on behalf of the respondents.

2. Taking into account that the issue involved in the instant writ petition has

already been dealt with by the learned Division Bench of this Court in various orders, this Court takes up the writ petition for disposal at the motion stage.

3. The petitioners herein are aggrieved by the order dated 25.05.2024 passed in Order in Original No.02/REF/GAIL/ACD/2024-25, whereby the petitioners' application seeking interest on the delayed refund of the excise duty was rejected. It is very pertinent to take note of that it is an admitted fact that the petitioner was entitled to refund of the excise duty in terms with the Notification No.33/99-CE dated 08.07.1999. However, it was on account of the delayed payment of the refund, the petitioners herein claimed interest. The interest claimed was determined to be Rs.4,48,92,856/- but was rejected by the impugned order dated 25.05.2024.

4. At this stage, this Court finds it relevant to take note of that the issue as regards claim of interest on delayed payment of the refund in terms with the Notification No.33/99-CE dated 08.07.1999 came up for consideration before the learned Division Bench of this Court in the case of *Amalgamated Plantations Pvt. Ltd. Vs. Union of India and Others* reported in (2016) 38 GSTR 395. The learned Division Bench of this Court vide judgment dated 08.11.2012 disposed of the said writ petition holding *inter alia*, that Section 11B of the Central Excise Act, 1944 (for short, the Act of 1944) did not exclude claim of refund made in terms of the Notification dated 08.07.1999. Accordingly, observed and directed that the petitioners therein would be entitled to interest under Section 11BB of the Act of 1944 on the excise duty refunded to them. The jurisdictional Excise Officer was, therefore, directed to determine the interest amount payable to the petitioners therein for the relevant period within a period of three months from the date of the said judgment.

5. The Union of India, thereupon, preferred a review petition challenging the

judgment dated 08.11.2012 in the Amalgamated Plantations Pvt. Ltd., (supra). The said review application was dismissed vide an order dated 14.03.2016 which is also reported in *(2016) 38 GSTR 388*. Thereupon, the Union of India preferred a Special Leave to Appeal with an application for condonation of delay. Vide the order dated 09.12.2016, the Supreme Court dismissed the Special Leave Petition on the ground of limitation, however, kept the question of law, open.

6. In the meantime, another set of writ petition came up for disposal before the learned Division Bench of this Court filed by a Company in the name and style of Pan Parag India Ltd. The said writ petition was registered and numbered as WP(C)No.4772/2016. This writ petition related to non-compliance of the order passed by the CESTAT, as regards the interest claimed on refunds. It is seen that the said writ petition was disposed of issuing directions by the learned Division Bench of this Court for payment of interest on delayed payment of refunds. Be that as it may, the said order which has been passed by the learned Division Bench of this Court in Pan Parag India Ltd., i.e. WP(C)No.4772/2016 was put to challenge by the Union of India before the Supreme Court in SLP bearing SLP(C) No.16322/2018 wherein the delay was condoned and leave was granted. Upon leave being granted the said proceedings were registered as Civil Appeal No.8714/2017.

7. Pursuant thereto, similar writ petitions were filed before this Court. One of such writ petitions was filed by a company in the name and style of M/s. Dharampal Satyapal Ltd. which is registered as WP(C)No.5434/2013. The learned Division Bench of this Court vide an order dated 29.01.2018 taking into account the judgment passed in the Amalgamated Plantations Pvt. Ltd., (supra) directed determination of the interest amount payable within three months and

quashed the order impugned therein whereby there was a rejection to the interest claimed on delayed refund. This order dated 29.01.2018 passed in WP(C)No.5434/2013 {M/s. Dharampal Satyapal Ltd. (supra)} thereafter was put to challenge before the Supreme Court which was registered and numbered as Special Leave Petition No.19237/2018 and vide the order dated 02.07.2018, the delay was condoned and there was a direction to tag the said Special Leave Petition with the Civil Appeal No.8714/2017 which was filed by Pan Parag India Ltd. (supra).

8. It was also seen that another company i.e. MK Jokai Agri Plantations P. Ltd. had also filed a writ petition before the Coordinate Bench of this Court claiming interest in terms with Section 11BB of the Act of 1944. The Coordinate Bench of this Court vide judgment and order dated 29.01.2021 also held that the petitioner therein i.e. MK Jokai Agri Plantations P. Ltd. would be entitled to interest on delayed refund in terms with Section 11BB of the Act of 1944 and, accordingly, had set aside the order impugned therein, whereby the interest on delayed refund was rejected.

9. A writ appeal there against was filed by the Union of India which was registered and numbered as Writ Appeal No.123/2021. The said Writ Appeal was withdrawn by the Union of India on the ground that the issue is pending before the Supreme Court in SLP(C) No.16322/2018. The said withdrawal was subject to the condition that the decision so passed in the said SLP shall be binding on the parties. Accordingly, the Division Bench of this Court vide order dated 01.09.2021 dismissed the said writ appeal on withdrawal subject to the condition that the claim of the company, namely, MK Jokai Agri Plantations P. Ltd. would be subject to the outcome of the said Special Leave Petition and the Revenue was directed to pay the amount within a period of three months. It

was again reiterated that the interest payable shall be subject to the outcome of the said SLP before the Apex Court. It is seen that another round of litigations had pursued filed by the Union of India which was registered and numbered as WA No.102/2022. The said writ appeal along with various others Central Excise Appeals were disposed of by the order dated 22.03.2023. The said order being relevant for the purpose of the instant proceedings is reproduced hereinunder:

*The present appeals preferred by the Revenue involve the common question of law as to whether interest is payable to an assessee on delayed refund of exemptions.*

*Mr. S.C. Keyal, learned counsel representing the Department submitted that the question aforesaid is pending consideration of the Hon'ble Supreme Court in SLP(C) No.016322/2018.*

*Dr. A. Saraf, learned Senior counsel representing the respondent in WA No.102/2022 has submitted that an identical appeal, WA No.160/2021 has been disposed of by this Court by order dated 01.09.2021 subject to the condition that the interest payable to the assessee shall be subject to the outcome of the aforesaid SLP [being SLP(C) No.016322/2018] pending before the Apex Court. In view of the facts and circumstances noted above, we direct the appellant Department to make payment of the interest on delayed refund to the respondent assessee within a period of 2(two) months from today. However, the assessee shall furnish an undertaking that in case the Revenue succeeds in the aforesaid SLP, the interest amount paid under this order shall be reimbursed to the Department.*

*The present appeals, WA No.102/2022, C.Ex.App. Nos.1/2022, 2/2022, 3/2022, 4/2022 and 6/2022 are accordingly disposed of.*

10. A perusal of the above order quoted would show that the learned Division Bench of this Court had directed payment of interest on the delayed refund to the respondent assessee therein within a period of two months from the date of the said order. However, it was observed that the assessee would have to furnish an undertaking that in case the revenue succeeds in the said SLP, the interest amount paid under the order so passed i.e. the order dated 22.03.2023 shall be reimbursed to the Department.

11. Mr. S Mitra, the learned counsel appearing on behalf of the petitioners submits that the petitioners herein are not adverse to giving an undertaking to the effect that if the amount to which the petitioners are entitled to is paid within a time-frame, the petitioners would be bound by the outcome of the SLP(C) No.16322/18 and the interest amount would be returned back to the department, if the department succeeds in the said proceedings.

12. Taking into account the above, this Court, therefore, disposes of the instant writ petition by interfering with the impugned order dated 25.05.2024. The interference so made herein is subject to the outcome of the SLP being SLP(C) No.16322/2018.

13. This Court directs the respondent authorities and, more particularly, the Assistant Commissioner, Central GST Division Dibrugarh to verify the amount of interest on the delayed refund of the dues of the petitioners and thereupon release the said amount within two months from the date of submission of the certified copy of this order. The payment would be released only upon an undertaking being submitted by the petitioners to the effect that in case the Revenue succeeds in the SLP being SLP(C) No.016322/18, the interest amount

paid on the basis of the instant order shall be reimbursed to the Department.

14. The writ petition, accordingly, stands disposed of.

**JUDGE**

**Comparing Assistant**